Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the
Supreme Court of the United States

GILDA A. KLEIN,

Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL,

Respondent.

On Petition for Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether petitioner, a U.S. citizen should have been investigated and fired from her employment of twenty-eight years, eight months and five days of exemplary service for exercising her Constitutional Rights under the First Amendment Freedom of Speech for having participated in a peaceful demonstration?

II. Whether or not male and female employees should be reprimanded differently for similarly situated conduct?

III. Whether or not petitioner should be denied equitable make-whole relief to redress discrimination?

IV. Whether or not Congress intended for the statutory language of Federal Employee Compensation Act (FECA) to preclude a federal employee from pursuing Title VII remedies for discrimination?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

CERTIFICATE OF INTEREST

Appellate Court No. 02-1140

Short Caption: Gilda A. Klein v. John Potter, Postmaster General

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, Must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1. NOTE: Counsel is required to complete the entire certificate and to use N/A for any information that is not applicable.

(1) The full name of every party or amicus the attorney represents in the case: Not applicable, appellant is pro-se.

(2) If such party or amicus is a corporation: Not Applicable

i) Its parent corporation, if any: Not Applicable

ii) A list of stockholders which are publicly held companies owning 10% or more of the stock in the party or amicus: Not Applicable

(3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court: Not Applicable

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in front of the table of contents of the party's main brief.

Attorney's Signature: /s/ Gilda A. Klein, Pro-Se

Attorney's Printed Name: Gilda A. Klein, Attorney Pro-Se

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case

OPINIONS BELOW

The opinion of the United States District Court for the District of Northern Illinois granting the United States' motion for summary judgment appears at Appendix B and is unpublished. The Seventh Circuit Court of Appeals' opinion affirming the district court's decision appears at Appendix A and is unpublished. The Seventh Circuit Court of Appeals order denying rehearing appears at Appendix C to this petition and is not published.

STATEMENT OF JURISDICTION

The Seventh Circuit Court of Appeals entered its opinion and order on August 20, 2002, and denied a rehearing on April 14, 2003. This petition for writ of certiorari is timely filed within 90 days of the denial of petition for rehearing. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(I).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

First Amendment Constitutional Right, 42 U.S.C. 2000e *et seq.* of the Civil Rights Act of 1964/1991 as well as 5 U.S.C. 8101-8193 of the Federal Employees Compensation Act.

STATEMENT OF THE CASE

This case arises out of the U.S. District Court, Northern District of Illinois, Eastern Division. The petitioner was the plaintiff in the trial court and the appellant in the District Court of Appeals, in and for the Seventh Circuit of Illinois and petitioner is seeking a writ of certiorari from the United States Supreme Court. Respondent was defendant/appellee, Respondent respectively below. The parties shall be referred to by their appropriate designations in this Court.

The court of first instance had jurisdiction to hear petitioner's claims of Constitutional violations and petitioners claims of discrimination under Title VII (App. A)

The petitioner describes this case as a violation of First Amendment Constitutional Right (Freedom of Speech and the right to peaceful assembly), and discrimination under the laws of Title VII (Sex). A full reading of the petition will give clarity and proof of the petitioner's meritorious claim(s) of constitutional, statutory and Title VII violations.

Petitioner, an African American female, a former employee of the United States Postal Service with 28 years, 8 months and 5 day tenure with an exemplary employment record, exercised her 1st Amendment right and participated in an informational picket with African American male co-workers, Earl Hicks and Carmen McClintonnel on March 6, 1998. Observation by the Postal Service accused petitioner of criminal activity and took steps to remove her from her employment. (App. D)

On March 10, 1998, petitioner was placed on administration leave pending an investigation of her actions. On March 27, 1998, petitioner was subjected to tangible acts of employment i.e., discharged and deprived of her property interest for a period of six months. (App. D)

These tangible acts of employment were not for "just cause" as record evidence affirmatively shows petitioners "Notice of Removal" was expunged from her record, petitioner was returned to full duty work on August 20, 1998 and petitioner was awarded back pay from March 31, 1998 thru August 19, 1998. In addition, petitioner being subjected to a pattern of abuse was awarded back pay for a 14 Day Suspension dated January 29, 1998, 7 Day Suspension dated August 14, 1997 and an Emergency Placement dated July 31, 1997. (App. E, F) Male co-workers, Carmen McClintonnel and Earl Hicks participated in the informational picket but were not subjected to the same adverse conduct by the employer. (App. G)

Petitioner, a pro-se litigant, advanced claims of sex discrimination to the lower courts but these claims were never addressed. (App. A, B and C) Petitioner was subjected to proving jurisdiction, which was improper and unwarranted; in that the court had jurisdiction. (App. A)

Petitioner was given "oral leave of court" by Judge, Robert Gettleman on July 19, 2001, to file an Amended complaint. Petitioner complied on September 18, 2001. (App. H)

Record evidence affirmatively shows petitioner's Amended Complaint sued William J. Henderson "solely" in his official capacity, which pre-empted the Respondents' allegations of petitioner filing a Bivens or a Tort Claim. (App. I) The record shows the Seventh Circuit Court of Appeals ruled on petitioner's Amended Complaint in favor of the Postmaster General in his official capacity. (App. C,H) Petitioner acted pursuant to her rights under the law and filed a claim for Workers Compensation for Intentional Infliction of Emotional Stress for which claim was accepted. (App. J)

Petitioners' claim of sex discrimination under Title VII which would have afforded petitioner make whole relief to redress discrimination, was not addressed in the lower court. (App. A, B and C)

REASONS FOR GRANTING WRIT OF CERTIORARI

I. This proceeding involves the important question of the rights of citizens to exercise their constitutional rights free from retaliation.

Petitioner in this action argues that she was fired for exercising her Constitutional Right under the First Amendment to engage in a peaceful demonstration, which did not disrupt the employer's enterprise. The lower court ignored this genuine issue of material fact as a matter of law.

II. The Civil Rights Act bars discrimination based on gender. Title VII 2003e *et seq.*

Petitioner also argues the lower court failed to address petitioner's Title VII claims of sex discrimination because of gender. These wrongful acts by Respondent are barred by the *Civil Right Act of 1991,* in that employer's rules or policies applying to one gender violates Title VII. Employers also may not provide different benefits to women than to men. Discrimination based on sex violates Title VII.

Petitioner has established a prima facie case of discrimination thru admissible evidence. These acts and wrongful conduct by the Respondent's in their exercise of abuse of power were actions the Appeals Court had jurisdiction to hear under the *Constitution 1st Amendment rights, The Civil Rights Act of 1991 (Title VII.).*

III. Congress did not intend for the Federal Employees Compensation Act to Bar Petitioner from make-whole relief.

Petitioner argues that claims for discrimination are not type covered by typical workers compensation acts or by Federal Employees Compensation act . *Metz v. U.S. D. Md*

1989 723 F. Supp. 1133. Federal employees filing for and receiving workers compensations benefits under FECA, for work related stress injury did not bar recovery under Title VII or rehabilitation act; Title VII and rehabilitation act remedy were equitable make whole relief to redress discrimination, not damages for workplace injury. *Johnson v. Sullivan, D. Md 1991, 764 F. Supp 1053.* Petitioner argues the court is aware of no law that precludes a FECA beneficiary from recovering for discrimination under Title VII or the *Rehabilitation Act 5 U.S.C. 8101-8193.* Petitioner argues the court finds that FECA was not intended to prevent claims under Federal anti-discrimination statutes. *Smith v. Barton, 914 F. 2d 1330 (9th Cir. 1990).*

Petitioner argues her exclusive remedy under FECA for emotional distress did not exclude injury for discrimination or loss of employment. The Third Circuit in *Miller v. Bolger, 802 F.2d 660 (3rd Cir. 1986)* has held that FECA recovery for injuries does not preclude claims for at least some Title VII recoveries. In that case, the court compared the statutory frameworks of Title VII and FECA and concluded that while FECA is an exclusive source of damages for workplace injuries, Title VII remedies are considered equitable make whole relief to redress discrimination. *Id. at 663.*

The court concluded:

> The legislative histories of FECA and Title VII make clear that the statutes create separate remedies against the United States for distinct types of injuries. The statutory language of FECA does not preclude a federal employee from pursuing Title VII remedies for discrimination and we find no evidence that Congress intended to do so.

CONCLUSION

This petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

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